

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:  
ELIZABETH A. HANLEY  
LAHIVE & COCKFIELD, LLP  
28 STATE STREET  
BOSTON, MA 02109

## PCT NOTIFICATION OF TRANSMITTAL OF INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Rule 71.1)

Date of Mailing  
(day/month/year) **07 MAY 2004**

Applicant's or agent's file reference

BGI-154PC

### IMPORTANT NOTIFICATION

International application No:

International filing date (day/month/year)

Priority date (day/month/year)

PCT/US02/21336

03 July 2002 (03.07.2002)

03 July 2002 (03.07.2002)

Applicant

BASF AKTIENGESELLSCHAFT

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.
4. **REMINDER**

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

Name and mailing address of the IPEA/US

Mail Stop PCT, Attn: IPEA/US  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Facsimile No. (703) 305-3230

Form PCT/IPEA/416 (July 1992)

Authorized officer

Tekchand Sarbajit

Telephone No. (571) 272-1600

RECEIVED  
LAHIVE & COCKFIELD  
DOCKET DEPT.

MAY 10 2004

RETRIEVED: 5/14

FORWARDED: 5/12 2004

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

|  |   |  |
|--|---|--|
| Applicant's or agent's file reference<br><b>BGI-154PC</b>  | <b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416) |  |
| International application No.<br><b>PCT/US02/21336</b>   | International filing date (day/month/year)<br><b>03 July 2002 (03.07.2002)</b>  | Priority date (day/month/year)<br><b>03 July 2002 (03.07.2002)</b> |
| International Patent Classification (IPC) or national classification and IPC<br><b>IPC(7): C12P 13/04; C12N 9/02, 9/10, 9/88, 1/20, 15/00; C07H 21/04 and US Cl.: 435/106, 189, 193, 232, 252.3, 320.1; 536/23.2</b> |   |  |
| Applicant<br><b>BASF AKTIENGESELLSCHAFT</b>  |   |  |

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 4 sheets, including this cover sheet.  
☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 0 sheets.

- This report contains indications relating to the following items:
  - ☒ Basis of the report
  - ☐ Priority
  - ☒ Non-establishment of report with regard to novelty, inventive step and industrial applicability
  - ☐ Lack of unity of invention
  - ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - ☐ Certain documents cited
  - ☐ Certain defects in the international application
  - ☐ Certain observations on the international application

|  |   |
|--|---|
| Date of submission of the demand<br><b>03 February 2004 (03.02.2004)</b>   | Date of completion of this report<br><b>24 March 2004 (24.03.2004)</b>                              |
| Name and mailing address of the IPEA/US<br>Mail Stop PCT, Attn: IPEA/US<br>Commissioner for Patents<br>P.O. Box 1450<br>Alexandria Virginia 22313-1450 | Authorized officer<br><i>Valerie Bell-Harris</i><br>Tekchand Sainha<br>Telephone No. (571) 272-1600 |
| Facsimile No. <b>(703) 305-3230</b>  |   |

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/US02/21336

## I. Basis of the report

## 1. With regard to the elements of the international application:\*

- ☒ the international application as originally filed.
- ☒ the description:  
pages 1-49 as originally filed  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_
- ☒ the claims:  
pages 50-55, as originally filed  
pages NONE, as amended (together with any statement) under Article 19  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_
- ☒ the drawings:  
pages 1-12, as originally filed  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_
- ☒ the sequence listing part of the description:  
pages 1-22, as originally filed  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_

## 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

## 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☒ contained in the international application in printed form.
- ☒ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☒ The amendments have resulted in the cancellation of:

- ☒ the description, pages NONE
- ☒ the claims, Nos. NONE
- ☒ the drawings, sheets/fig NONE

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/US02/21336

**III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

1. The question whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been and will not be examined in respect of:

- ☐ the entire international application,  
☒ claims Nos. 11-15,23-28,30-35 and 39-41

because:

- ☐ the said international application, or the said claim Nos. \_\_\_\_\_ relate to the following subject matter which does not require international preliminary examination (*specify*):

- ☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 11-15,23-28,30-35 and 39-41 are so unclear that no meaningful opinion could be formed (*specify*):

Claims listed above are Improper Multiple dependent and were not searched during establishment of the international search report.

- ☐ the claims, or said claims Nos. \_\_\_\_\_ are so inadequately supported by the description that no meaningful opinion could be formed.  
☐ no international search report has been established for said claims Nos. \_\_\_\_\_

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

- ☐ the written form has not been furnished or does not comply with the standard.  
☐ the computer readable form has not been furnished or does not comply with the standard.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.  
PCT/US02/21336

## V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

### 1. STATEMENT

|                               |   |     |
|-------------------------------|---|-----|
| Novelty (N)                   | Claims <u>1-10, 16-22, 29, 36-38, 42-49</u> | YES |
|                               | Claims <u>NONE</u>                          | NO  |
| Inventive Step (IS)           | Claims <u>1-10, 16-22, 29, 36-38, 42-49</u> | YES |
|                               | Claims <u>NONE</u>                          | NO  |
| Industrial Applicability (IA) | Claims <u>1-10, 16-22, 29, 36-38, 42-49</u> | YES |
|                               | Claims <u>NONE</u>                          | NO  |

### 2. CITATIONS AND EXPLANATIONS

Claims 1-10, 16-22, 29, 36-38 & 42-49 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest a process for enhanced production of pantothenate, comprising culturing a microorganism having a deregulated methylenetetrahydrofolate (MTF) biosynthetic pathway.

Claims 1-10, 16-22, 29, 36-38 & 42-49 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

NEW CITATIONS

# PATENT COOPERATION TREATY

## PCT

### NOTE OF INFORMAL COMMUNICATION WITH THE APPLICANT

(PCT Rule 66.6)

|   |  |  |
|---|--|--|
| International application No.<br>PCT/US02/21336 | Applicant's or agent's file reference<br>BGI-154PC | Date of informal communication<br>(day/month/year)<br>24 March 2004 (24.03.2004) |
| Applicant<br>BASF AKTIENGESELLSCHAFT            |  |  |

|   |   |  |
|---|---|--|
| <u>Communication</u><br><input checked="" type="checkbox"/> by telephone<br><input type="checkbox"/> personal | <u>Participants</u><br><input checked="" type="checkbox"/> Applicant: BASF AKTIENGESELLSCHAFT<br><input checked="" type="checkbox"/> Agent: Giulio A. Deconti<br><input checked="" type="checkbox"/> Examiner(s): Tekchand Saidha | <input type="checkbox"/> Identity checked<br><input type="checkbox"/> authorization checked<br><input type="checkbox"/> personally known |
|---|---|--|

#### Summary of communication:

Applicants' Attorney, Mr. Giulio Deconti was informed that a International Preliminary Examination Report (IPER) is being established for the claims searched during establishment of International Search Report, which excludes the multiple dependent claims not searched.

- ☐ An extension of time limit is granted (Form PCT/IPEA/427).
- ☒ A copy of this note is being sent to the applicant with Form PCT/IPEA/429.
- PCT/IPEA/424.

|   |  |
|---|--|
| Name and mailing address of the IPEA/US<br>Mail Stop PCT, Attn: IPEA/US<br>Commissioner for Patents<br>P.O. Box 1450<br>Alexandria, Virginia 22313-1450<br>Facsimile No. (703) 305-3230 | Authorized officer<br><i>Valerie Bel-Harris for</i><br>Tekchand Saidha<br>Telephone No. (571) 272-1600 |
|---|--|